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SUBJECT: SUPREME COURT ASSESSMENT UNDERScores REFLEXIVE
PARTISANSHIP

Classified By: POLITICAL COUNSELOR FRANCISCO FERNANDEZ,
FOR REASON 1.4(D)

1. (C) Summary: A legal study quantifying the level of partisanship in the Venezuelan Supreme Court (TSJ) was released the week of March 2 to a number of local Venezuelan dailies. The study, conducted by legal scholar Antonio Canova, finds that the court has been unwilling to rule in favor of private citizens who have sued the Government of the Bolivarian Republic of Venezuela (GBRV) or its state-owned entities, even when the cases include clear government infractions or are over minor, non-political issues. The findings describe a debilitated judiciary that reflexively protects the state and offers no legal recourse to Venezuelans seeking to challenge the government. End Summary.

TSJ REFUSES TO RULE AGAINST THE STATE

2. (C) Lawyer and TSJ expert Antonio Canova told poloff March 6 that he had conducted a case-by-case assessment of every decision made by the TSJ's Political-Administrative chamber over the past few years. (Note: The Political-Administrative chamber reviews cases of private citizen plaintiffs who bring complaints against BRV officials or government-owned institutions, such as the PDVSA state oil company. End Note.) Canova's research concluded that out of hundreds of cases since 2005, just a handful had been decided in favor of the plaintiff, and the number was decreasing. In 2007, the government lost just a solitary case, out of 325 reviewed by the Political-Administrative chamber in total.

3. (C) Canova noted that many of the cases were over trivial issues or small contract violations, and did not represent "political cases." He opined that this indicates that the TSJ magistrates are unwilling to be perceived as going against the BRV even in trivial matters and/or where the government is clearly at fault. The single individual who won her case in 2007 had been struck by a municipal bus in 1992 which caused serious physical injury. Because her settlement was not adjusted for inflation since the incident 15 years prior, she came away with the 2008 equivalent of about USD \$1,000.

4. (C) Canova contended that the TSJ was made up of roughly three groups: a large Chavista militant contingent who are essentially politicians; a group of underqualified magistrates who have received their positions due to political patronage; and a few impartial magistrates -- no more than three -- who have not yet been weeded out. He added that nearly all the judges who were appointed before Chavez increased the size of the bench in 2003 have been forced into retirement or otherwise removed by pressure from

the BRV and the National Assembly. Of the second group, some do not even meet the legally stipulated career requirements for a judgeship and so have little standing or incentive to do more than rubber-stamp the orders of the BRV.

¶15. (C) Canova argued that the wording of Chavez's 1999 Constitution actually offered more protection to private citizen plaintiffs against the government than the previous Magna Carta. He suggested that the publication of his findings could lead to a decline in the number of cases brought before the TSJ, as it represents the first widely publicized quantitative proof of the Court's bias. Canova said that even his legal colleagues found the research's conclusions surprising.

COMMENT

¶16. (C) Canova's highly-publicized findings quantify for the first time the ongoing weakening of the judiciary and its subservience to the GBRV, even in trivial, non-political issues. His investigation indicates that Venezuelans have virtually no legal recourse against infractions large or small by the state or its entities -- a particularly salient issue given the millions of Venezuelans who work in the public sector. The passage of Chavez's February 15 referendum to remove term limits, which has been interpreted to apply to TSJ magistrates as well, suggests that there is little incentive for the courts to reverse this trend. End Comment.
CAULFIELD